

**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

251597

**FILE:** B-210161**DATE:** May 17, 1983**MATTER OF:** Lutz Superdyne, Inc.**DIGEST:**

Where bid sample submitted with low offer was evaluated against listed subjective characteristic of "serviceability" and bidder submitted noncompliant sample which affected "accuracy" of product, sample was properly rejected since direct correlation exists between serviceability and accuracy of the equipment being examined.

Lutz Superdyne, Inc. protests the award of a requirements contract to any other bidder under invitation for bids (IFB) No. FTP-BR-F0150-RA-10-28-82, issued by the General Services Administration (GSA), Federal Supply Service for various types of tools. Lutz was the low bidder for item No. 2, levels and plumbs, but its bid was rejected because the sample submitted by Lutz for the item was found to be nonconforming to certain bid sample requirements. Award has been made to another firm. We deny the protest.

The levels and plumbs, National Stock Number (NSN) 5210-00-241-8305, were required to be supplied in accordance with Federal Specification GGG-L-211C. Bid samples were required to be furnished as part of the bids from the production of the manufacturer whose product was to be supplied; bids were to be rejected if the samples failed to conform with characteristics listed for examination in the solicitation. The solicitation provided for bid sample evaluation as follows:

"(h) Samples will be evaluated \* \* \* to determine compliance with all characteristics listed below:

SUBJECTIVE CHARACTERISTICS All items will be inspected for any visually determinable characteristics which adversely affect serviceability, durability and/or safety.

OBJECTIVE CHARACTERISTICS: NONE"

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The solicitation further required that all products delivered under any resulting contract must strictly comply with the approved sample as to subjective characteristics and must also conform to the IFB's specifications in all other respects.

Lutz submitted for evaluation its standard commercial level for item No. 2. GSA inspected the sample and determined that the sample failed to comply in that the level contained a straight (mono) vial instead of a bent-glass vial as required by paragraph 3.9.1 of Federal specification GGG-L-211C. After Lutz filed a protest with the agency concerning the rejection of its bid, the contracting officer requested the technical evaluator to explain how the lack of a bent-glass vial affected the serviceability of the level, the stated basis for rejection of the sample. In response, the evaluator indicated that "the bent-glass vial is a much more accurate vial than the straight (mono) vial."

Lutz contends that rejection of its bid as nonresponsive for failure of its sample to comply with the specification's bent-glass vial requirement was improper since its standard commercial level, which otherwise conformed to the specifications, was submitted for visual inspection of subjective characteristics only, e.g. serviceability, durability and/or safety. Lutz argues that GSA's rejection of its sample relates solely to an objective characteristic outside the scope of the evaluation as advertised. Lutz states that it is "perfectly aware" that the specifications require a bent-glass vial and is prepared to meet the requirement as it has in previously furnished identical items. In short, Lutz contends that its bid sample in fact complied with the subjective characteristics of the solicitation and that the rejection was based on an objective characteristic.

GSA maintains that Lutz's bid sample was properly rejected as nonresponsive because the sample level contained a straight (mono) vial instead of a bent-glass vial, which "adversely affected the serviceability of the level." GSA explains that a characteristic affects serviceability "when it affects the end use of the product." GSA concludes that since it is "generally accepted" that a level with a bent-glass vial is a more

accurate instrument than a level with a straight vial, Lutz's sample was properly rejected. GSA cites Airway Industries, Inc., et al., 57 Comp. Gen. 686 (1978), 78-2 CPD 115, as support for its action. In effect, it is GSA's position that the bent-glass vial requirement is inherent in the evaluation of "serviceability."

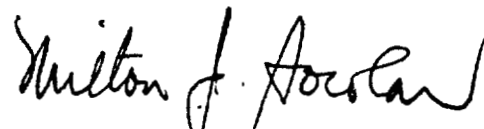
The only issue here, then, is whether GSA properly evaluated the bid sample for the subjective characteristic of serviceability. Generally, so long as the bid samples submitted for examination comply with the stated purpose for which they were required, there is no requirement that the samples otherwise comply with the specifications, nor is the bidder, by submission of such noncompliant samples, relieved from furnishing items fully in accord with those specifications. See New Britain Hand Tools Division, Litton Industrial Products, Inc., B-192126, February 1, 1979, 79-1 CPD 77; D. N. Owens Company, 57 Comp. Gen. 231 (1978), 78-1 CPD 66.

Airway stands for the proposition that to the extent a direct correlation exists between an aspect of the specifications and the subjective characteristic listed for examination, the bid sample must also comply with that aspect of the specification, even though it is not separately listed as a specific characteristic to be examined. Serviceability is defined in Webster's Third New International Dictionary (1971) as "fitness to give service or usefulness for a purpose; wearing quality or durability." Since durability is itself a distinct characteristic listed in the solicitation for examination, we accept GSA's definition of serviceability as a "characteristic affecting end use." Also, since the purpose of a level is to provide accurate readings of plane surfaces, we believe that there is a direct correlation between the instrument's serviceability and the specification requirement relating to accuracy. In our view, the rejection of Lutz's sample was proper under the standard announced in Airway.

While Lutz also argues that straight (mono) vials are as accurate as bent-glass vials it never challenged the specification prior to bid opening. The argument merely constitutes an untimely disagreement with the judgment of the agency's technical personnel as that judgment is reflected in the specifications. 4 C.F.R. § 21.2(b)(1) (1983).

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The protest is denied.

*for*   
Comptroller General  
of the United States